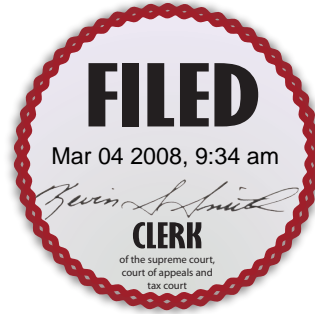


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM CASS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0707-CR-635

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Heather Welch, Judge
Cause No. 49F09-0603-FD-41750

March 4, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

William Cass appeals his sentence for violating his probation.

We affirm.

ISSUE

Whether the sentence imposed for a probation violation is an abuse of discretion.

FACTS

On August 18, 2006, Cass pled guilty to vicarious sexual gratification, as a class D felony, in Marion County. Pursuant to a plea agreement, the trial court sentenced Cass to 1,095 days, with 763 days suspended to probation. On February 13, 2007, the trial court ordered Cass to avoid contact with any person under the age of 18 years.

At noon on February 24, 2007, Christian Carlisle, a Marion County probation officer, went to Cass's place of residence—a motel in Hancock County—to conduct a random home visit. As Carlisle approached Cass's motel room, he "heard children making noise inside." (Tr. 45). After entering the room, Carlisle observed Cass "awake and alert" and "laying [sic] on the bed in his boxer shorts." (Tr. 45). Also in the room were Cass's girlfriend, Barbara Rose, and Rose's two grandchildren, ages three and four years-old. The motel room consisted of a bathroom and one room with a twin bed.

Carlisle contacted the Hancock County Sheriff's Department and waited in the motel's parking lot for the police to arrive. While waiting, Carlisle observed Cass's girlfriend exit the motel room. No one else exited the room; Carlisle, however, observed the children's mother—Rose's daughter—enter the motel room.

The State charged Cass with invasion of privacy, to which Cass later pled guilty. On February 27, 2007, the State filed a notice of probation violation, alleging that Cass had been arrested for invasion of privacy and had violated the no-contact order. The trial court held a probation revocation hearing on June 22, 2007, after which the trial court imposed an executed sentence of 730 days.

DECISION

Cass asserts that the imposition of a 730-day sentence is inappropriate “for an innocent, fifteen-minute encounter with children where no sexual conduct occurred, and where Mr. Cass was never alone with the children.” Cass’s Br. 5. Cass argues that we should review his sentence under Indiana Appellate Rule 7(B).

Indiana Code section 35-38-2-3(g) provides as follows:

If the court finds that the person has violated a condition [of probation] at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may:

- (1) continue the person on probation, with or without modifying or enlarging the conditions;
- (2) extend the person’s probationary period for not more than one (1) year beyond the original probationary period; or
- (3) order execution of all or part of the sentence that was suspended at the time of initial sentencing.

We review a trial court’s sentencing decision in a probation revocation proceeding for an abuse of discretion. *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* Thus, in reviewing the imposition of a sentence for a probation violation, we do not apply the standard set forth in Indiana Appellate Rule 7(B). *See id.*

In this case, the trial court informed Cass that he was to have no contact with persons under the age of 18 years. Less than two weeks later, Cass violated the no-contact order by having two young children in his motel room while he was there. Thus, we find no abuse of discretion in ordering Cass to serve 730 days of his 763-day suspended sentence.

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.